

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the amendments and in view of the reasons that follow.

Claims 1, 13, 15, 47 and 48 have been amended. Claim 48 has been amended to correct a typographical error. Claims 10-12 and 21-46 have been canceled. Claims 1-9, 13-20, and 47-48 are now pending in this application.

I. Rejection of Claims 1-3, 6, 10-24, 28-31, 34-41, and 44-48 under 35 U.S.C. § 102(b)

In Section 2 of the Office Action, claims 1-3, 6, 10-24, 28-31, 34-41, and 44-48 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,788,105 (Foos). Claims 10-12, 21-24, 28-31, 34-41, and 44-46 have been canceled rendering the rejection of these claims moot. Applicant respectfully traverses this rejection relative to claims 1-3, 6, 13-20, and 47-48.

Claim 1, with emphasis added, recites:

at least one tamper evident lock base portion integrally formed with a portion of the base rim, wherein the tamper evident lock base portion includes a crushable dimple; and

...

at least one tamper evident lock cover portion integrally formed with a portion of the cover rim, wherein the tamper evident lock cover portion includes a crushable dimple; and

further wherein the crushable dimple of the tamper evident lock base portion and the crushable dimple of the tamper evident lock cover portion are adapted to be fastened together by nesting one within the other;

whereby the cover may be secured to the base by nesting and crushing together the crushable dimple of the tamper evident lock base portion and the crushable dimple of the tamper evident lock cover portion.

Claim 47, with emphasis added, recites:

(a) providing a base formed of thermoformed plastic, the base including a floor; at least one base side wall integrally formed with and extending upward from the floor; a base rim, the base rim integrally formed with a top of the at least one base side wall; and at least one tamper evident lock base portion integrally formed with a portion of the base, wherein the tamper evident lock base portion includes a crushable dimple;

(b) providing a cover formed of thermoformed plastic, the cover including a ceiling; at least one cover side wall integrally formed with and extending downward from the ceiling; a cover rim, the cover rim integrally formed with the bottom of the at least one cover side wall; and at least one tamper evident lock cover portion integrally formed with a portion of the cover, wherein the tamper evident lock cover portion includes a crushable dimple, wherein the tamper evident lock base portion and the tamper evident lock cover portion are adapted to be engaged and fastened together;

...

(e) fastening the engaged tamper evident lock base portion and tamper evident lock cover portion by crushing the engaged crushable dimples;

Foos fails to teach at least the limitation “whereby the cover may be secured to the base by nesting and crushing together the crushable dimple of the tamper evident lock base portion and the crushable dimple of the tamper evident lock cover portion” as required by claim 1, and the limitation “fastening the engaged tamper evident lock base portion and tamper evident lock cover portion by crushing the engaged crushable dimples” as required by claim 47.

Foos describes a “reclosable package having visible evidence of tampering Upon first closure of the package, the closure portions engage each other, and upon first opening of the package, the closure portion become detached from the package.” (Foos, Abstract). As such, Foos describes a first snap closure 84 and a second snap closure 94. (Foos, FIGs. 1-5). Foos more specifically describes:

As with the tabs 78 and 80, the snap closures 84 and 94 are in registry with each other along or about the periphery of the tabs 78 and 80 respectively. From FIG. 4 it can be seen that the first snap closure 84 is configured for receiving the second snap closure 94. More specifically, this means that the outer wall 98 and outer planar surface 100 of the second snap closure 94 is frictionally and lockingly engaged with the inner wall 88 and the inner planar surface 90 of first snap closure 84. This locking feature of the snap closures is important in providing readily visible evidence of tampering with the package, in that upon first closure of the package 10, when snap closures 84 and 94 are locked together, initial opening of the package 10 causes tabs 78 and 80 to become detached from cutouts 44 and 74 respectively (best seen in FIG. 2).

(Foos, Col. 4, lines 18-32). Foos still further describes:

As in the case with package 10, the snap closures 132 and 158 are in registry with each other along the periphery of the lid portion 112 and the tray portion 114 respectively. Furthermore, the second snap closure 158 is configured for matingly receiving the first snap closure 132. More specifically, this means that the outer wall 138 and outer planar portion 140 of the first snap closure 132 are matingly locked with the inner wall 164 and inner planar surface 166 of the second snap closure 158. This feature of the snap closures, which is virtually identical to that shown in relation to FIG. 4, is important in providing readily visible evidence of tampering with the package, in that upon initial closure of the package, when snap closures 132 and 158 are engaged, opening the packages causes at least one, and preferably both, of the snap closures 132 and 158 to become detached from lid 112 and tray 114 respectively, providing readily visible evidence of tampering.

(Foos, Col. 5, lines 44-60).

According to Foos,

At least one, and preferably three, frangible connectors 102 are formed integral to and removably connecting the tabs 78 and 80 to cutouts 44 and 74 (best seen in FIG. 2). In the preferred embodiment, the connectors 102 are large enough to connect the

tabs 78 and 80 to cutouts 44 and 74 during formation and initial closing, but small enough to be easily broken upon initial opening.

(Foos, Col. 4, lines 37-43; emphasis added). Thus, because the connectors 102 are easily broken, the crushing together of the snap closure is unnecessary.

As a result, Foos fails to teach at least the limitations “crushing together the crushable dimple of the tamper evident lock base portion and the crushable dimple of the tamper evident lock cover portion” and “fastening the engaged tamper evident lock base portion and tamper evident lock cover portion by crushing the engaged crushable dimples.” As a result, Foos fails to disclose, suggest, or teach all of the limitations of claims 1 and 47. An anticipation rejection cannot properly be maintained where the reference used in the rejection does not disclose all of the recited claim elements. Applicant respectfully traverses any arguments posed by Examiner relative to claims 2-9, 13-20, and 48 as they are allowable for at least the reasons outlined above relative to claims 1 and 47. Therefore, Applicant respectfully requests withdrawal of the rejection of claims 1-9, 13-20, and 47-48.

II. Rejection of Claims 21-27 under 35 U.S.C. § 102(b)

In Section 3 of the Office Action, claims 21-27 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,953,728 or U.S. Patent No. 5,628,417. Claims 21-27 have been canceled rendering the rejection of these claims moot. As a result, Applicant respectfully requests withdrawal of the rejection.

III. Rejection of Claims 4, 5, 7-9, 32, 33, 42, and 43 under 35 U.S.C. § 103(a)

In Section 5 of the Office Action, claims 4, 5, 7-9, 32, 33, 42, and 43 were rejected under 35 U.S.C. § 103(a) as being anticipated by Foos in view of U.S. Patent No. 6,625,955 (Aylward). Claims 32, 33, 42, and 43 have been canceled rendering the rejection of these claims moot. Applicant respectfully traverses this rejection relative to claims 4, 5, and 7-9 because Examiner has failed to present a prima facie case of obviousness. At a minimum, Examiner has failed to

demonstrate that Foos and Aylward, alone or in combination, disclose, teach, or suggest all of the claim limitations as recited in claims 4, 5, and 7-9.

As discussed in Section I. above, Foos fails to teach at least the limitation “crushing together the crushable dimple of the tamper evident lock base portion and the crushable dimple of the tamper evident lock cover portion” as required by claim 1. Aylward also fails to teach at least this limitation. Aylward describes “a thermoformed recloseable flat package for a pill-like product.” (Aylward, Abstract). Aylward further describes that the “use of the foil layer 17 provides a convenient moisture barrier and tamper-evident function which eliminates the need for a plastic wrapper covering the entire package of the type used in prior credit card-type packages.” (Aylward, Col. 6, lines 24-27). Aylward still further describes:

When the corner portion 12 is opened, the foil layer 17 may remain adhered to the peripheral flange 16. An intact foil layer 17 signals to the consumer that the package 10 has not been tampered with and the foil layer 17 can then be punctured to gain access to the consumable items 11.

(Aylward, Col. 7, lines 50-54). Thus, Aylward fails to teach at least the limitation “crushing together the crushable dimple of the tamper evident lock base portion and the crushable dimple of the tamper evident lock cover portion.”

As a result, neither Foos nor Aylward disclose, suggest, or teach all of the limitations of claim 1. An obviousness rejection cannot be properly maintained where the references used in the rejection do not disclose all of the recited claim elements. Therefore, Applicant respectfully requests withdrawal of the rejection of claims 4, 5, and 7-9 which depend from claim 1.

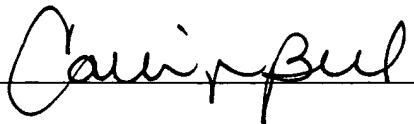
Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application is respectfully requested. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 50-2350. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-2350. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 50-2350.

Respectfully submitted,

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FOLEY & LARDNER LLP
Customer Number: 23524
Telephone: (608) 258-4263
Facsimile: (608) 258-4258

By _____

Callie M. Bell
Attorney for Applicant
Registration No. 54,989